



**MCI Telecommunications Corporation**

1801 Pennsylvania Avenue, NW  
Washington, DC 20006  
202 887 2779  
FAX 202 887 2204

**Donald H. Sussman**  
Regulatory Analyst  
Federal Law and Public Policy

ORIGINAL

July 8, 1999

DOCKET FILE COPY ORIGINAL

Ms. Magalie R. Salas  
Secretary  
Federal Communications Commission  
445 12th Street, SW TW-A325  
Washington, D.C. 20554

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JUL 8 1999  
FEDERAL COMMUNICATIONS COMMISSION

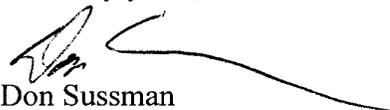
**Re: In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, CC Docket No. 94-129**

Dear Ms. Salas:

Enclosed herewith for filing are the original and eleven (11) copies of MCI WorldCom's Reply Comments on Petitions for Reconsideration regarding the above-captioned matter.

Please acknowledge receipt by affixing an appropriate notation on the copy of the MCI WorldCom Reply Comments on Petitions for Reconsideration furnished for such purpose and remit same to the bearer.

Sincerely yours,

  
Don Sussman

Enclosure  
DHS

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List A B C D E

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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JUL 8 1999

In the Matter of: )  
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In the Matter of Implementation )  
of the Subscriber Carrier Selection Changes )  
Provisions of the Telecommunications Act )  
of 1996 )  
)  
Policies and Rules Concerning Unauthorized )  
Changes of Consumers Long Distance Carriers )

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

CC Docket No. 94-129

**MCI WORLDCOM, INC. REPLY COMMENTS  
ON PETITIONS FOR RECONSIDERATION**

The plethora of issues raised in the petitions for reconsideration and/or clarification of the Commission's Order demonstrates that the Commission's rules, as written, are fraught with confusing rules that, not only are inconsistent with the clear statutory language of §258, but impose significant costs on carriers with little offsetting consumer benefit.<sup>1</sup> On March 30, 1999, an industry group submitted a proposal calling for a neutral, industry-funded "Third Party Administrator" (TPA) to switch consumers back to their preferred carriers and, if appropriate,

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<sup>1</sup> In the Matter of Implementation of Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 94-129 (rel. Dec. 23, 1998)(Order).

ensure credits are issued.<sup>2</sup> The TPA proposed in the Joint Petition, when combined with third party verification methods employed by companies such as MCI WorldCom, Inc. (MCI WorldCom), is consistent with §258 and offers customers protection from unauthorized carrier changes in a straight forward manner.<sup>3</sup> As MCI WorldCom argued in its comments filed on June 23, 1999 in the instant proceeding, establishing an independent TPA is the fastest and most efficient way to resolve the many issues surrounding the Commission's, and industry's, efforts to mitigate unauthorized conversions, and should take precedence to resolving issues raised in petitions for reconsideration of the Commission's Order in this docket

However, as MCI WorldCom also argued in its comments, if the Commission instead continues down the path of attempting to make its confusing, costly, and over burdensome unauthorized conversion rules work in a procompetitive manner, then it must (1) reconsider its rule absolving customers who have been victimized by unauthorized conversion from thirty days of long distance charges; (2) restate that local exchange carriers (LECs) must accept properly verified customer requests to implement and/or lift and continue preferred carrier (PC) freezes

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<sup>2</sup> See In the Matter of Implementation of Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, Joint Petition For Waiver, filed by MCI WorldCom, Inc. on behalf of MCI WorldCom, Inc, AT&T Corp., the Competitive Telecommunications Association, Sprint Corporation, the Telecommunications Resellers Association, Excel Communications, Frontier Corporation, and Qwest Communication Corporation on March 30, 1999 (Joint Petition).

<sup>3</sup> The TPA proposal offers consumers, government agencies, and carriers a single point of contact that will: (1) quickly resolve customer allegations of unauthorized conversions; (2) independently determine a carrier's compliance with the Commission's verification procedures; (3) honor Commission's requirements that customers be compensated for their inconvenience; and (4) administer carrier-to-carrier liability.

from any carrier; (3) clarify that, if a three-way call is necessary to change a PC freeze, then executing carriers have an obligation to accept PC changes and PIC changes during the same call;<sup>4</sup> (4) clarify that the PIC verification rules apply to new line installations; (5) maintain its prohibition on executing carriers' use of PC freeze and PIC change information for marketing purposes; (6) uphold its rule prohibiting executing carriers from verifying carrier change requests; and (7) take affirmative action to ensure that PIC changes are neutrally-administered and cost based.<sup>5</sup>

In comments filed on June 23, 1999, only the National Association of State Utility Consumer Advocates (NASUCA), the National Telephone Cooperative Association (NTCA), and SBC argue that the Commission's absolute rule is consistent with §258.<sup>6</sup> The record in this proceeding clearly demonstrates that the Commission overstepped its jurisdiction in replacing Congress' specific remedy to unauthorized conversions with one that the Commission deemed better. As the record demonstrates, the Commission simply does not have the authority to replace a Congressionally-mandated remedy with one that it prefers.<sup>7</sup> NASUCA, NTCA, and SBC have

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<sup>4</sup> The Commission's should also specify that its rules require ILECs to continue the freeze feature for a customer, regardless of which carrier he or she selects.

<sup>5</sup> In the Matter of Implementation of Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, MCI WorldCom Comments, filed June 23, 1999.

<sup>6</sup> NASUCA Comments at 2-5, NTCA Comments at 4, SBC Comments at 2-4.

<sup>7</sup> See AT&T Petition at n. 7 (Commission's general rulemaking authority applies only where "not inconsistent with this Act") 47 U.S.C. §154(i), Sprint Petition at 7 ("The Commission cannot simply ignore Congress' words and attempt to write a new statute out of cloth") Western Union v. FCC, 729 F.2d 811, 817 (D.C. Cir., 1984), Sprint Petition at 7 (the fact that Section 258(b) "does not reference charges that have been paid does not give the Commission the authority to assume responsibility for deciding whether such charges or portion of such charges need be paid

provided no new evidence to refute this point.

Also, NASUCA's contention that the Commission's absolution rule will not lead to an increase in customer fraud is incorrect.<sup>8</sup> As MCI WorldCom argued in its comments, volumes have been written and a court stay won, based on the arguments that the Commission's rules invite fraud, are impossible to implement, and add to customer confusion.<sup>9</sup> While NASUCA's expertise is to protect consumers' interests generally, NASUCA has never operated as a carrier, and therefore does not have first hand knowledge to evaluate how particular processes would lead to opportunities for customers to defraud carriers. Therefore, in this area the Commission should dismiss NASUCA's contention and, instead, rely on the expertise of carriers, such as MCI WorldCom, AT&T, Sprint, Qwest, Cable & Wireless, and GTE, that have repeatedly argued that the Commission's absolution rule will lead to increases in fraudulent customer activities.<sup>10</sup>

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by consumers claiming to have been slammed. Such decision is properly made by Congress), American Ship Building Co. v. NLRB, 85 S.Ct. 955, 967 (1965), Frontier Petition at 3 (“[a] reviewing court ‘must first exhaust the “traditional” tools of statutory construction’ to determine whether Congress has spoken to the precise question at issue.”) Chevron USA, Inc v. Natural Resources Defense Council, 467 U.S. 834 (1984). (These tools include the examination of the statute’s text, legislative history, and structure, as well as purpose. If the court’s examination of the statute reveals a clear answer, “then Congress has expressed its intention as to the question, and defense is not appropriate.”) Bell Atlantic Tel Cos. V FCC, 131 F.3d 1044, 1047 (D.C. Cir. 1997). Frontier Petition at n. 10 (“[I]t is only legislative intent to delegate such authority [to fill a gap] that entitles an agency to advance its own statutory construction for review under the deferential second prong of Chevron”) See Chevron, 467 U.S. at 843-44; Bell Atlantic, 131 F.3d at 1049. Frontier Petition at 5 (“The agency’s interpretation of an unambiguous statutory cannot trump the plain will of Congress”) Southwestern Bell Corp. v. FCC, 43 F.3d 1515, 1522 (D.C. Cir. 1995).

<sup>8</sup> NASUCA Comments at 8.

<sup>9</sup> See MCI WorldCom Comments at 5-11.

<sup>10</sup> See for example, Frontier Petition for Reconsideration at 14-16, Sprint Petition for Reconsideration at 9-11, AT&T Petition for Reconsideration at 6-11, GTE Petition for

In its petition for reconsideration, AT&T requested that the Commission modify its rules to allow direct carrier submission of PC freeze changes.<sup>11</sup> As MCI WorldCom argued in its comments, AT&T correctly noted in its petition that there is no reasoned basis for the Commission's conclusion that third party verification (TPV) provides adequate protection from abuse in cases of freeze orders submitted to a LEC directly by a customer, but not in the case of such orders directly submitted to the LECs by other carriers.<sup>12</sup> Additionally, there is no justification for believing that the TPV process, which is sufficient for protecting consumers from unauthorized carrier changes, is not sufficient to protect customers from unauthorized PC freeze changes.<sup>13</sup>

In comments filed June 23, 1999, Bell Atlantic, GTE, Ameritech, SBC, the Rural LEC Coalition, and the National Telephone Cooperative Association (NTCA) argue that ILEC participation in the PC change process is superior to TPV.<sup>14</sup> They claim that without their involvement, unscrupulous interexchange carriers will continue to change customers without authorization. These parties fail, however, to explain how this could happen in an environment

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Reconsideration at 2-3, and MCI WorldCom Comments at 4. Also, NTCA's request that the Commission modify its rules to absolve customers from thirty days of long distance charges from the date the bill is received by the customer should be dismissed, NTCA Comments at 4-7, as it would simply lengthen the period for which customers could take advantage of the system, thereby increasing the cost of fraudulent activity to the industry.

<sup>11</sup>AT&T Petition at 15.

<sup>12</sup>AT&T Petition at 16.

<sup>13</sup> Id.

<sup>14</sup> Bell Atlantic Comments at 2, GTE Comments at 6, Ameritech Comments at 2-3, SBC Comments at 7-11, Rural LEC Coalition Comments at 3, NTCA Comments at 4.

where TPV, or one of the other Commission-approved verification processes, is required. These same parties also claim that the Commission should reverse its rule prohibiting executing carriers from verifying PIC change requests that have been verified by one of the Commission-approved verification processes.<sup>15</sup>

In their comments, the ILECs portray themselves as impartial, competitively-neutral agents working on behalf of the customer's best interest, and claim that their involvement is necessary solely to protect customers. While this may have been true in the past, such contentions cannot be taken at face value in today's environment where ILECs acting as executing carriers compete on an intraLATA basis (or for many ILECs, on an interLATA basis) with interexchange carriers for the very customers involved in the PIC change.<sup>16</sup> The Commission correctly recognized in its Order that ILECs acting as executing carriers have the incentive to try to "win back" the customer through the verification process. The Rural LEC Coalition claims in its comments that no examples have been provided on the record to demonstrate that ILECs have attempted to win back customers through verification since the Commission's rules have taken effect. MCI WorldCom's experience corroborates AT&T's findings. MCI WorldCom has uncovered many cases where the ILECs have attempted to winback the customer through "verification," especially in instances where the ILECs (i.e., Bell Atlantic, Pacific Bell and GTE ) refuse to allow us to change a PIC request or modify a PC freeze on a three-way call. Some ILECs, as noted in our initial comments, continue to ignore the

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<sup>15</sup> Id.

<sup>16</sup> At present, only the Regional Bell Operating Companies are precluded from offering in-region long distance service.

Commission's rules and refuse to allow such modifications unless the customer calls the ILEC directly, alone.<sup>17</sup> It appears that these ILECs then use that opportunity to try and winback the customer.

NTCA argues that the Commission should lift the rule prohibiting ILEC verification of PIC change requests for small rural ILECs because these LECs have special ties with their communities.<sup>18</sup> NTCA has provided no evidence that the relationship that small rural LECs have with their customers is unique. More importantly, NTCA has not provided any evidence that even suggests that small rural LECs would be less likely to try to win back a customer through the verification process than would a larger LEC. Given the difficulties inherent in policing the activities of the more than 500 small rural LECs, it is as important for the Commission's rules prohibiting ILEC verification of PIC change requests to apply to small and large ILECs alike. Incentive to compete anticompetitively is unrelated to size or geographic location.

No new evidence has been provided on the record that would lead the Commission to reverse its position on ILEC verification of PIC change requests. As MCI WorldCom, AT&T, Cable & Wireless, Sprint, and Qwest correctly argue in their comments, the Commission correctly prohibited ILECs acting as executing carriers from verifying PIC change requests. This rule should not be reconsidered by the Commission.

Finally, as MCI WorldCom argued in its comments, the Commission should clarify that if a customer places an installation order with the executing carrier and chooses an IXC

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<sup>17</sup>See MCI WorldCom Comments at 12-13.

<sup>18</sup> NTCA Comments at 2.

unaffiliated with the LEC for both long distance and local toll, then no verification is necessary under the Commission's rules. However, in instances where the LEC or its affiliate has an interest in, and obtains, the long distance customer, the LEC must verify the selection (e.g., if a customer chooses a LEC for intraLATA service, the LEC must verify the order because, in that instance, the LEC is both the authorized and executing carrier). Sprint, Ameritech, and GTE argue in their comments that the Commission's verification rules should not apply to new installations. These carriers argue that installations cannot be deemed unauthorized conversions because, by definition, they are not changes in preferred carriers. Ameritech also argues that unauthorized conversions of new installations is not possible because the ILEC collects detailed information from the customer when acting as an executing carrier for new installations.<sup>19</sup> GTE contends that there is no evidence on the record that demonstrates unauthorized conversions of new installs is a problem, consequently, there is no reason to apply the Commission's verification rules in such instances.

It is irrelevant whether a customer is switching among long distance carriers or selecting a long distance provider for the first time. The Commission's rules, and Congress' intent, is clearly to ensure that the carrier providing service to the customer is the authorized carrier. To ensure that end, the Commission's verification rules should apply in all instances where carriers have incentive, and the ability, to change a customer's carrier selection without his or her authorization. Ameritech's logic is also flawed. While Ameritech may be correct that it is less likely for an unintentional unauthorized conversion to take place during an install given all the

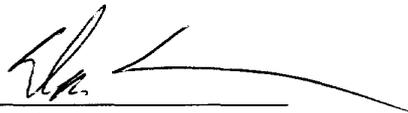
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<sup>19</sup> Ameritech Comments at 6.

information that the executing carrier typically collects, nothing prevents the ILEC from intentionally converting the customer to its affiliate without the necessary authorization (i.e., collecting information from the customer, then either manipulating or ignoring the customer's request information in a self serving manner when implementing the customer's preferred carrier request).

As MCI WorldCom explained in its comments, in order to prevent ILECs from implementing carrier selecting requests (or PIC changes) in a self-serving, anticompetitive manner, the Commission should clarify that if a LEC-initiated installation chooses an IXC unaffiliated with the LEC for both long distance and local toll, then no verification is necessary under the Commission's rules. However, in instances where the LEC or its affiliate has an interest in, and obtains, the long distance customer, the LEC must verify the selection.

Respectfully submitted,  
MCI WORLDCOM, Inc.



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Don Sussman  
1801 Pennsylvania Avenue, NW  
Washington, DC, 20006  
(202) 887-2779

July 8, 1999

STATEMENT OF VERIFICATION

I have read the foregoing and, to the best of my knowledge, information, and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on July 8, 1999

A handwritten signature in black ink, appearing to read 'Don Sussman', with a long horizontal flourish extending to the right.

Don Sussman  
1801 Pennsylvania Avenue, NW  
Washington, D.C. 20006  
(202) 887-2779

**CERTIFICATE OF SERVICE**

I, Vivian Lee, do hereby certify that copies of the foregoing In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers of MCI WorldCom, Inc. were sent via first class mail, postage paid, to the following on this 8th day of July, 1999.

Chairman William E. Kennard\*\*  
Federal Communications Commission  
The Portals  
445 12th Street, SW, 8th Fl.  
Washington, DC 20554

Dorothy Attwood\*\*  
Chief, Enforcement Division  
Federal Communication Commission  
The Portals  
445 12th Street, SW  
Washington, DC 20554

Commissioner Harold Furchtgott-Roth\*\*  
Federal Communications Commission  
The Portals  
445 12th Street, SW, 8th Fl.  
Washington, DC 20554

Glenn Reynolds\*\*  
Federal Communications Commission  
The Portals  
445 12th Street, SW  
Washington, DC 20554

Commissioner Michael K. Powell\*\*  
Federal Communications Commission  
The Portals  
445 12th Street, SW, 8th Fl.  
Washington, DC 20554

Alexander P. Starr\*\*  
Federal Communications Commission  
The Portals  
445 12th Street, SW.  
Washington, DC 20554

Commissioner Susan P. Ness\*\*  
Federal Communications Commission  
The Portals  
445 12th Street, SW, 8th Fl.  
Washington, DC 20554

Judy Boley\*\*  
Federal Communication Commission  
The Portals  
445 12th Street, SW, Room A1836  
Washington, DC 20554

Commissioner Gloria Tristani  
Federal Communications Commission  
The Portals  
445 12th Street, SW, 8th Fl.  
Washington, DC 20554

Kathy Brown\*\*  
Federal Communications Commission  
The Portals  
445 12th Street, SW, 8th Fl.  
Washington, DC 20554

Anita Cheng\*\*  
Common Carrier Bureau  
Federal Communication Commission  
The Portals  
445 12th Street, SW, 8th Fl.  
Washington, DC 20554

ITS\*\*  
1231 20th Street, NW  
Washington, DC 20037

Pamela Arluk  
Marcy Greene  
For Excel Telecommunications, Inc.  
Swidler, Berlin Shereff, Friedman, LLP  
3000 K Street, N.W., Suite 300  
Washington, DC 20007

Robert M. Lynch  
Roger K Toppins  
Barbara R. Hunt  
SBC Communications Inc.  
One Bell Plaza, Room 3026  
Dallas, TX 75202

Michael J. Shortley, III  
Attorney for Frontier Corporation  
180 South Clinton Avenue  
Rochester, NY 14646

Michael Donahue  
For RCN Telecom Services, Inc.  
Swidler, Berlin Shereff, Friedman, LLP  
3000 K Street, NW, Suite 300  
Washington, DC 20007

Leon M. Kestenbaum  
Jay C. Keithley  
Michael B. Fingerhut  
Sprint Corporation  
1850 M Street, NW, 11th Floor  
Washington, DC 20036

David Cosson  
Marcie E. Greenstein  
For Rural LECs  
Kraskin, Lesse & Cosson, LLP  
2120 L Street, NW, Suite 520  
Washington, DC 20037

Andre J. Lachance  
GTE Service Corporation  
1850 M Street, NW  
Washington, DC 20036

Susan M. Eid  
Tina S. Pyle  
Richard A. Karre  
MediaOne Group, Inc.  
1919 Pennsylvania Avenue, NW  
Suite 610  
Washington, DC 20006

L. Marie Guillory  
Jill Canfield  
National Telephone Cooperative Association  
2626 Pennsylvania Avenue, N.W.  
Washington, DC 20037

Robert S. Tongren  
David C. Bergmann  
For The National Assn. Of State Utility  
Consumer Advocates  
Ohio Consumers' Counsel  
77 South High Street, 15th Floor  
Columbus, OH 43266

Timothy S. Carey  
Michael P. Sasso  
Anne F. Curtin  
State Consumer Protection Board  
5 Empire State Plaza, Suite 2101  
Albany, NY 12223

Gary L. Phillips  
Counsel for Ameritech  
1401 H Street, N.W. #1020  
Washington, DC 20005

Mark C. Rosenblum  
Peter H. Jacoby  
Attorneys for AT&T Corp.  
295 North Maple Avenue  
Room 3250J1  
Basking Ridge, NJ 07920

Genevieve Morelli  
Jane Kunka  
Qwest Communications Corporation  
4250 North Fairfax Drive  
Arlington, VA 22203

\*HAND DELIVERED

  
Vivian Lee

Richard M. Sharatta  
M. Robert Sutherland  
Helen A Shockey  
BellSouth Telecommunication, Inc.  
1155 Peachtree Street, NE, Suite 1700  
Atlanta, GA 30309

Kathryn Marie Krause  
Dan L. Poole  
Attorneys for US West, Inc.  
1020 19th Street, NW, Suite 700  
Washington, DC 20036

James G. Pachulski  
Stephen E. Bozzo  
Bell Atlantic Telephone Companies  
1320 North Court House Road  
Eight Floor  
Arlington, VA 22201

John T. Scott, III  
Crowell & Moring LLP  
Attorneys for Bell Atlantic Mobile, Inc.  
1001 Pennsylvania Avenue, NW  
Washington, DC 20004

Rachel J. Rothstein  
Paul W. Kenefick  
Cable and Wireless, Inc.  
8219 Leesburg Pike  
Vienna, VA 22182